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# Planning Statement

Junction of Oxspring Road and Mortimer Road, Sheffield, S36 8AB

Application for a Certificate of Lawfulness for the Existing Use and Development of land and buildings as a builder's store

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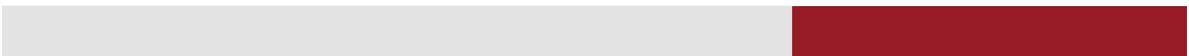
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## Contents

1	Introduction.....	3
2	Site Description and Planning History.....	4
	Site Location .....	4
	Relevant Planning History .....	5
3	Background Information .....	6
4	Planning Legislation.....	6
	Town and Country Planning Act 1990 .....	6
	Levelling-up and Regeneration Act 2023.....	8
	The Town and Country Planning (Development Management Procedure) (England) Order 2015 .....	8
5	Applicant’s Case .....	10
	Sworn Affidavit .....	10
	Other Evidence .....	10
6	Conclusions .....	11



# 1 Introduction

- 1.1 Planning & Design Practice is a multidisciplinary practice consisting of chartered town planners, architects and heritage specialists. The practice operates across England and Wales and has an exemplary track record of submitting successful planning applications and in facilitating sustainable development.
- 1.2 This application seeks a Certificate of Lawfulness for the Existing Use and Development of land and buildings as a builder's store at the Junction of Oxspring Road and Mortimer Road, Sheffield, S36 8AB.
- 1.3 This report has been structured to provide: an introduction to the site; information about the site and its planning history; details of planning legislation relating to Lawful Development Certificates; and the applicant's case, providing evidence that the land and buildings have been in use as the builder's yard for over ten years.
- 1.4 Also submitted to accompany the report are the following:
- Site Location Plan;
  - Site Plan as Existing;
  - Appendix A – Google Earth and Street View images of site; and
  - Appendix B - Sworn Affidavit from Neighbour.

## 2 Site Description and Planning History

### Site Location

- 2.1 The site's use as a builder's store comprises the open storage of machinery and construction materials, including scaffolding, a digger, dumper, skip, hardcore, drainage pipes, walling stone, cement mixer, acro props, water bowser, and other associated building materials, together with a shipping container and a lock-up. The application site is located at the junction between the western end of Oxspring Road and Mortimer Road, around 1.5km south of Penistone.



*Figure 1: Aerial image of the site (edged in red)*

- 2.2 In planning policy terms, the site is located within the Green Belt. There are no other planning designations on the site.

## Relevant Planning History

2010/1092	Erection of 2no. single storey earth sheltered dwellings (Resubmission)	<i>Approved – 8<sup>th</sup> December 2010</i>
2009/1038	Erection of two dwellings	<i>Withdrawn – 25<sup>th</sup> September 2009</i>
B/98/0460/PU	Erection of bungalow with garage (Outline)	<i>Refused - 2003</i>

2.3 The two dwellings approved under ref. 2010/1092 have now been built and are occupied.

### 3 Background Information

- 3.1** This application seeks a Certificate of Lawfulness for the Existing Use and Development of land and buildings as a builder's store at the junction of Oxspring Road and Mortimer Road, Sheffield, S36 8AB.
- 3.2** The applicant has owned and used the site as a builder's store continuously since December 2012. The use comprises a lock-up yard, a shipping container, and open storage for machinery and construction materials, including scaffolding, a digger, a dumper, a skip, hardcore, drainage pipes, walling stone, a cement mixer, acro props, a water bowser, and other associated building materials.

### 4 Planning Legislation

- 4.1** Applications for a Certificate of Existing Lawful Use or Development are used to establish whether an existing use of land, or some operational development, or some activity in breach of a planning condition, is lawful. They are a legal test based on the balance of probability.
- 4.2** The Planning and Compensation Act 1991 introduced statutory time limits within which local planning authorities can take enforcement action against breaches of planning control. From 25th April 2024, the enforcement period has been standardised at ten years for all types of breaches. In this case, the relevant breach falls within the category that was already subject to the ten-year rule prior to that date. Therefore, both before and after 25th April 2024, the applicable enforcement period is ten years from the date of the breach. Once this period has passed, the use or development becomes lawful and immune from enforcement action.

#### Town and Country Planning Act 1990

- 4.3 Section 191** 'Certificate of lawfulness of existing use or development' determines whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes. It states:

*(1) If any person wishes to ascertain whether—*

*(a) any existing use of buildings or other land is lawful;*

*(b) any operations which have been carried out in, on, over or under land are lawful; or*

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matters.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or **because the time for enforcement action has expired or for any other reason**); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

[...]

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

#### 4.4 Section 171B 'Time limits'

(1) *Where there has been a breach of planning control, consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of –*

*(a) In the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and [...]*

*[...]*

(3) *In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.*

### **Levelling-up and Regeneration Act 2023**

4.5 Chapter 5, Paragraph 115 'Time limits for enforcement' states that:

(1) *In section 171B of TCPA 1990 (time limits), in subsection (1), for the words from "four years" to the end substitute-*

*"(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and [...]"*

(2) *In that section, in subsection (2), for the words from "four years" to the end substitute-*

*(a) In the case of a breach of planning control in England, ten years beginning with the date of the breach, and [...]"*

### **The Town and Country Planning (Development Management Procedure) (England) Order 2015**

4.6 Part 8, Article 39 'Certificate of lawful use or development' specifies the contents of an application and how it must be submitted. It states that:

(1) *An application for a certificate under section 191(1) or 192(1) of the 1990 Act (certificates of lawfulness of existing or proposed use or development) must be made on a form published by the Secretary of State (or on a form substantially to the same effect) and must, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the particulars specified or referred to in the form.*

*(2) An application to which paragraph (1) applies must be accompanied by—*

*(a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;*

*(b) such evidence verifying the information included in the application as the applicant can provide; and*

*(c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.*

**4.7** In summary, if evidence is provided to demonstrate that on the balance of probability, the buildings and associated land have been in use as a builder's store in excess of 10 years, a Lawful Development Certificate should be granted.

## 5 Applicant's Case

- 5.1 Confirmation of the existing use and development of the land and buildings as a builder's store is a legal determination based on the facts and the available evidence to establish whether the use of the development is established and lawful by the passage of the relevant period of time and therefore beyond the scope of enforcement. The test of the evidence is "on the balance of probabilities" rather than the stricter criminal test of "beyond reasonable doubt".
- 5.2 If the Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

### Sworn Affidavit

- 5.3 A sworn affidavit from Natasha Holmes (neighbour) has been submitted as part of this Lawful Development Certificate application (Appendix A). Natasha is the occupant of 4 Oxspring Road, Penistone, S36 8AB. She has lived at the dwelling since December 2015.
- 5.4 The sworn affidavit confirms that the land and buildings have been used as a builder's store since at least May 2013, when she purchased the plot, prior to building works commencing, in continuous use, without interruption. The site has been used for the storage of machinery and materials and for the siting of a shipping container.

### Other Evidence

- 5.5 Although the applicant only acquired the site in December 2012, publicly available aerial imagery from Google Earth and street view imagery from Google Maps demonstrates that the land had already been in use as storage since at least 2009, and has remained in continuous use since that date. The aerial imagery from May 2009 highlights the removal of trees and the creation of a track. In addition, street view imagery from July 2009 further highlights the site access, fencing and storage of equipment, including the shipping container. Subsequent images (December 2009, April 2011, June 2015, June 2016, May 2017, May 2018, April 2020, March 2022, July 2022/2023, April 2025 and June 2025) show the continued use of the site as a builder's store, without interruption, for over 15 years.

5.6 It has therefore been demonstrated that the land and buildings have been used as a builder's store for a period of at least 10 years. As such, the land and buildings are immune from enforcement action and are therefore lawful in accordance with Section 191(2) of the Town and Country Planning Act 1990.

## 6 Conclusions

6.1 This application seeks a Certificate of Lawfulness for the Existing Use and Development of land and buildings as a builder's store at the Junction of Oxspring Road and Mortimer Road, Sheffield, S36 8AB.

6.2 The supporting evidence, including a sworn affidavit and historic aerial and street view imagery, demonstrates that the site has been continuously used as a builder's store for a period exceeding ten years. Although the applicant only acquired the site in December 2012, the evidence shows that the storage use was established prior to their ownership and has continued uninterrupted since that time. On the balance of probabilities, the use of the land and associated development is therefore lawful and now immune from enforcement action under Section 191(2) of the Town and Country Planning Act 1990.

6.3 Accordingly, it is respectfully requested that the Local Planning Authority issue a Certificate of Lawfulness for the existing use and development of the land and buildings as a builder's store.



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